

Serial No. 09/982,126

**REMARKS**

Examiner Novosad has rejected claim 26 of the present application. For the reasons which follow, applicants respectfully traverse this rejection of the Examiner. The applicant does, however, wish to extend appreciation to Examiner Novosad for the quite detailed review of the claims of the present invention leading to the finding of patentable subject matter of the claims of the present application and an indication that claims 1-18, 22-25 and 27-32 are allowed.

The undersigned wishes to extend appreciation for the courtesies extended in a telephonic interview on November 3, 2004 and for the agreement of patentability of claim 26 over the prior art and of the entry of the present amendment. The substance of the telephonic interview is hereby confirmed.

It is respectfully submitted that a person skilled in the art would not consider clamp 39 of Ackerman to be a "mast". Further, it is respectfully submitted that clamp 39 of Ackerman is not utilized "for lifting and hauling". Furthermore, although Ackerman discloses that clamp 39 is released and reengaged, it is respectfully submitted that in the ordinary operation of Ackerman, the removal of fastener 35 and/or clamp 39 does not occur and in fact would not be desired. Examiner Novosad indicated that it was a stretch to read the recitations of claim 26 upon Ackerman. However, in a spirit of conciliation to advance prosecution of this application, claim 26 has been amended to further define the present invention in a manner to prevent the reading of claim 26 upon Ackerman. Although it had been agreed that claim 26 amended with the word "fixed" (instead of "secured") would define over Ackerman and the prior art, the undersigned choose to use the word "secured" because this word was utilized in the specification (see at least page 10, line 24). However, if this is in any way an obstacle to the allowance of claim 26, the undersigned will amend claim 26 to utilize the word "fixed" as previously agreed.

It is believed that claim 26 as amended is in condition for allowance agreed in the telephonic interview. However, as previously discussed by telephone, it is respectfully requested that Examiner Novosad initiate a telephonic interview with the undersigned if there are any obstacles to the allowance of this application.

By the lack of application of the references previously cited by the Examiner and the applicants and others like them within the classes or subclasses searched, the Examiner

Serial No. 09/982,126

apparently recognizes the clear patentability of the present invention over any of these references.

Therefore, since the claims of the present application have been shown to include limitations directed to the features of applicants' simple, durable and easy-to-use earthworking machine which are neither shown, described, taught, nor alluded to in any of the references cited by the Examiner and by the applicants, whether those references are taken singly or in any combination, the Examiner is requested to allow claims 1-18 and 22-32 as amended of the present application and to pass this application to issue.

Respectfully submitted,

Thomas E. Isaman, et al.

Dated: November 3, 2004

By: 

Alan D. Kamrath (Reg. No. 28,227)  
NIKOLAI & MERSEREAU, P.A.  
International Centre  
900 Second Avenue South  
Minneapolis, Minnesota 55402  
TEL: (612) 339-7461  
FAX: (612) 349-6556